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Attorneys for Defendant

UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NICHOLAS SEAN CARTER,

Defendant

No. 4:19-CR-6063-SMJ-2

MOTION TO CONTINUE TRIAL DATE AND
PRE-TRIAL CONFERENCE AND RESET
DEADLINES

Note: December 13, 2019
Without Argument
Judge Mendoza at Yakima

COMES now the Defendant, by and through his attorneys and requests this Court grant the defendant's Motion to Continue Pre-Trial Date and Trial Date and re-set deadlines. This matter currently is scheduled for trial on January 13, 2020. The defendant would request a trial date set at least 60 days, to March 16, 2020 to allow his counsel to review recently received discovery and interview witnesses and prepare for trial.

Mr. Carter is aware of this request and will submit a signed Speedy Trial Waiver with this motion.¹ The government does not oppose this request. Co-defendant's counsel has stated no opposition to this request.

ARGUMENT

¹ Mr. Carter inadvertently signed a waiver which is used by Judge Rice. Counsel is in the process of getting a Statement of Reasons signed. However, as the defendant is in Spokane, the statement of reasons will be filed by December 13, 2019.

1 The Supreme Court has stated that “broad discretion must be granted trial courts on
2 matters of continuances.” *Morris v. Slappy*, 461 U.S. 1, 11 (1983). When the defendant's sixth
3 amendment right to counsel is implicated a court must balance several factors to determine if the
4 denial [of a continuance] was “fair and reasonable.” Among the factors are: whether the
5 continuance would inconvenience witnesses, the court, counsel, or the parties; whether other
6 continuances have been granted; whether legitimate reasons exist for the delay; whether the
7 delay is the defendant's fault; and whether a denial would prejudice the defendant. *United States*
8 *v. Studley*, 783 F.2d 934, 938 (9th Cir. 1986) (quoting *United States v. Leavitt*, 608 F.2d 1290,
9 1293 (9th Cir. 1979) (per curiam))

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11 Counsel for Mr. Carter has a pre-planned vacation out of the country starting on
12 December 13, 2019 to December 23, 2019. Additional time is also necessary to complete
13 counsel’s investigation in this matter and further review the discovery with Mr. Carter. A denial
14 of this request to continue would severely prejudice the defendant and counsel cannot be present
15 on the pre-trial date of December 19, 2019 and counsel would not be prepared for trial on
16 January 13, 2020. Clearly a continuance is warranted, and the granting of the request would be
17 proper.

18 CONCLUSION

19 For the reasons stated herein, it is respectfully request that the defendant’s Motion to
20 Continue the Trial Date and Pre-Trial be continued. It is further requested that the Pre-Trial
21 Motions Deadline be re-set.

22 Dated this 5th day of December 2019.

23
24 *s/ Nicholas Marchi*
25 NICHOLAS MARCHI
Carney & Marchi, P.S.
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the Motion to Continue PTC and Trial Date was e-mailed via ECF /mailed first class, postage prepaid on 12/6/2019, to S. Van Marter, Assistant United States Attorney, 402 E. Yakima, Ave., Suite 210, Yakima, WA 98901 or P.O. Box 1494 Spokane, WA 99210 and to A. Pechtel, attorney for Co-defendant, Mr. Pacheco-Robles.

s/Nicholas Marchi
CARNEY & MARCHI, P.S.
Attorneys for Defendant